Pastelle Company, Inc. d/b/a St. Regis Hotel *and* Local 547, International Union of Operating Engineers, AFL–CIO and Local 24, Hotel Employees and Restaurant Employees International Union, AFL–CIO. Cases 7–CA–45206(3) and 7–CA–45638

July 21, 2003

BY CHAIRMAN BATTISTA AND MEMBERS LIEBMAN AND SCHAUMBER

DECISION AND ORDER

The General Counsel seeks a default judgment[1] in this case on the ground that the Respondent has failed to file an answer to the complaint. Based on a charge and an amended charge filed by Local 547, International Union of Operating Engineers, AFL–CIO (Local 547), on September 17 and November 27, 2002, respectively, and a charge and amended charge filed by Local 24, Hotel Employees and Restaurant Employees International Union, AFL–CIO (Local 24), on November 15 and 22, 2002, respectively, the General Counsel issued a consolidated amended complaint on January 30, 2003, against Pastelle Company, Inc., d/b/a St. Regis Hotel, the Respondent, alleging that it has violated Section 8(a)(1) and (5) of the Act. The Respondent failed to file an answer.

On March 4, 2003, the General Counsel filed a Motion for Summary Judgment with the Board. On March 6, 2003, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. The Respondent filed no response. The allegations in the motion are therefore undisputed.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

Ruling on Motion for Default Judgment

Section 102.20 of the Board's Rules and Regulations provides that the allegations in the complaint shall be deemed admitted if an answer is not filed within 14 days from service of the complaint, unless good cause is shown. In addition, the consolidated amended complaint affirmatively noted that unless an answer was filed by February 13, 2003, all the allegations in the amended complaint would be considered admitted. Further, the undisputed allegations in the motion disclose that the Region, by letter dated February 19, 2003, notified the Respondent that unless an answer was received by February 26, 2003, a Motion for Default Judgment would be filed. Nevertheless, the Respondent did not file an answer to the consolidated amended complaint.[2]

In the absence of good cause being shown for the failure to file a timely answer, we grant the General Counsel's Motion for Default Judgment.

On the entire record, the Board makes the following

FINDINGS OF FACT

I. JURISDICTION

At all material times, the Respondent, a corporation, has been engaged in the operation of a hotel in Detroit, Michigan.

During the calendar year ending December 31, 2001, the Respondent, in conducting its business operations, derived gross revenues in excess of $500,000 and received at its Detroit facility products valued in excess of $50,000, which were shipped directly from points located outside the State of Michigan.

We find that the Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act and that Locals 547 and 24 are labor organizations within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

At all material times, the following individuals held the positions set forth below opposite their names and have been supervisors of the Respondent within the meaning of Section 2(11) of the Act and agents of the Respondent within the meaning of Section 2(13) of the Act:

David Steele	President and Owner
Tom Wilkerson	Controller
Gwen Robinson	Human Resources Representative
Desmond Steele	Supervisor
Mark Grant	Supervisor

Since at least the 1970's, and at all material times, Local 547 has been the exclusive collective-bargaining representative of the appropriate unit described below (unit A) and has been so recognized by the Respondent. This

[1] The General Counsel's motion requests summary judgment on the ground that the Respondent has failed to file an answer to the complaint. Accordingly, we construe the General Counsel's motion as a motion for default judgment.

[2] The Respondent also did not file an answer to the original complaint in Case 7–CA–45206(3) issued December 27, 2002.

recognition has been embodied in successive collective-bargaining agreements, the most recent of which was effective from January 1, 2001, to March 31, 2003. Unit A is:

> All full time and regular part time preventative maintenance, utility, and helper employees employed by the Respondent at its Detroit facility; but excluding all supervisors and guards as defined by the Act.

Since at least the 1970's, and at all material times, Local 24 has been the exclusive collective-bargaining representative of the appropriate unit described below (unit B) and has been so recognized by the Respondent. This recognition as been embodied in successive collective-bargaining agreements, the most recent of which was effective from April 1, 2000, to December 31, 2002. Unit B is:

> All employees set forth in Appendix A through F of the collective-bargaining agreement.

At all times since the 1970's, based on Section 9(a) of the Act, Locals 547 and 24 have been the exclusive collective-bargaining representatives of units A and B, respectively.

In about late July 2002, the Respondent unilaterally subcontracted unit A's work and laid off unit A employees.

The Respondent has engaged in unilateral changes in the employees' terms and conditions of employment and repudiated the following provisions of unit A's collective-bargaining agreement as described below:

> 1. Since about March 17, 2002, provisions relating to paying the Stationary Engineers Local 547, Education Fund, Central Pension Fund, and the International Union of Operating Engineers Local 547 and Participating Employers' Health & Welfare Trust Fund.
>
> 2. Since about August 14, 2002, provisions relating to the grievance procedure.
>
> 3. During all times material herein, provisions concerning wage rates of unit employees.

On or about October 8, 2002, the Respondent unilaterally reduced the gratuity rate paid to unit B employees who worked during Sunday brunch.

On about November 29, 2002, the Respondent unilaterally implemented a medical plan for unit B and began charging its unit B employees for participation in that plan.

On about August 23, 2002, the Respondent repudiated the provisions of unit B's collective-bargaining agreement relating to the grievance procedure.

The subjects set forth above relate to wages, hours, and other terms and conditions of employment of units A and B and are mandatory subjects for the purposes of collective bargaining. The Respondent engaged in the conduct described above without prior notice to the respective Unions and without affording them an opportunity to bargain with the Respondent with respect to this conduct and the effects of this conduct on the respective units.

On about August 14, 2002, in writing, Local 547 requested that the Respondent furnish it with information about unit A employees and the Respondent's health and safety program for these employees.

On about October 21, 2002, in writing, Local 24 requested that the Respondent furnish it with information about its status as the employer, and about medical insurance benefits and employee layoffs for unit B.

The above information requested by Locals 547 and 24 is necessary for and relevant to the performance of their duties as the exclusive collective-bargaining representatives of the respective units.

Since about August 14, 2002, the Respondent has failed and refused to furnish Local 547 with the requested information, and since about October 21, 2002, the Respondent has failed and refused to furnish Local 24 with the requested information.

CONCLUSION OF LAW

By the acts and conduct described above, the Respondent has failed and refused, and is failing and refusing, to bargain collectively and in good faith with the exclusive collective-bargaining representatives of its employees within the meaning of Section 8(d) of the Act, and has thereby engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(5) and (1) and Section 2(6) and (7) of the Act.

REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, we shall order it to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act. Specifically, having found that the Respondent violated Section 8(a)(5) and (1) of the Act by unilaterally subcontracting out unit A work and laying off unit A employees in late July 2000, we shall order the Respondent to rescind the decision to subcontract, restore the work to the unit A employees, and make them whole, with interest, for any loss of earnings and other benefits they may have suffered as a result of the Respondent's unlawful conduct, in the manner set forth in *Ogle Protection Service*, 183 NLRB 682 (1970), enfd. 444 F.2d 502 (6th Cir. 1971), with interest as prescribed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987). In addition, we shall order the Respondent

to offer unit A employees who were laid off because of the Respondent's unlawful subcontracting full reinstatement to their former jobs or, if such jobs no longer exist, to substantially equivalent positions, without prejudice to their seniority or other rights and privileges previously enjoyed, and to make them whole for any loss of earnings or other benefits as a result of their layoffs, to be computed in the manner prescribed in *F. W. Woolworth Co.*, 90 NLRB 289 (1950), with interest as prescribed in *New Horizons for the Retarded*, supra.

Having found that the Respondent also violated Section 8(a)(5) and (1) of the Act by repudiating the provisions of its January 1, 2001, to March 31, 2003 collective-bargaining agreement with Local 547 covering unit A relating to various fringe benefit funds, wage rates, and the grievance procedure, and its April 1, 2000, to December 31, 2002 collective-bargaining agreement with Local 24 covering unit B relating to the grievance procedure, we shall order the Respondent to honor the terms and conditions of those agreements, until a new agreement or good-faith impasse in negotiations is reached. In addition, we shall order the Respondent to make whole the employees of unit A for any loss of earnings and other benefits they may have suffered as a result of the Respondent's repudiation of the provisions relating to various fringe benefit funds and wage rates. Further, we shall order the Respondent to make all contractually required fringe benefit fund payments or contributions, if any, that have not been made on behalf of the unit A employees since March 17, 2002, including any additional amounts applicable to such delinquent payments in accordance with *Merryweather Optical* Co., 240 NLRB 1213, 1216 (1979).[3] The Respondent shall also be required to reimburse the unit A employees for any expenses ensuing from its failure to make the required payments or contributions, as set forth in *Kraft Plumbing & Heating*, 252 NLRB 891 fn. 2 (1980), enfd. mem. 661 F.2d 940 (9th Cir. 1981). All payments to the unit A employees shall be computed in the manner set forth in *Ogle Protection Service*, supra, with interest as prescribed in *New Horizons for the* Retarded, supra. Finally, we shall order Respondent to process all grievances that have not been processed for unit A employees since August 14, 2002, and for unit B employees since August 23, 2002.

[3] To the extent that an employee has made personal contributions to a fund that are accepted by the fund in lieu of the Employer's delinquent contributions during the period of the delinquency, the Respondent will reimburse the employee, but the amount of such reimbursement will constitute a setoff to the amount that the Respondent otherwise owes the fund.

Having found that the Respondent also violated Section 8(a)(5) and (1) of the Act by unilaterally reducing the gratuity rate paid to unit B employees who work during Sunday brunch and implementing a medical plan for unit B employees and charging them for participation in that plan, we shall order the Respondent to rescind the changes in the gratuity rate and, on request, also rescind the medical plan and return to the status quo or any other plan agreed to by Local 24. We shall also order the Respondent to make the unit B employees whole for any loss of earnings and other benefits they may have suffered as a result of the Respondent's unlawful conduct, in the manner set forth in *Ogle Protection Service*, supra, with interest as prescribed in *New Horizons for the Retarded*, supra.

Finally, having found that the Respondent has failed and refused to furnish Locals 547 and 24 with information that is relevant and necessary to their role as the exclusive bargaining representative of the employees in units A and B, respectively, we shall order the Respondent to furnish Locals 547 and 24 with the information they requested on August 14 and October 21, 2002, respectively.

ORDER

The National Labor Relations Board orders that the Respondent, Pastelle Company, Inc., d/b/a St. Regis Hotel, Detroit, Michigan, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Failing and refusing to bargain in good faith with Local 547, International Union of Operating Engineers, AFL–CIO, as the exclusive bargaining representative of the employees in the following appropriate unit (unit A) by unilaterally subcontracting work normally performed by the unit A employees and laying off unit A employees:

> All full time and regular part time preventative maintenance, utility, and helper employees employed by the Respondent at its Detroit facility; but excluding all supervisors and guards as defined by the Act.

(b) Repudiating the provisions of its January 1, 2001, to March 31, 2003 collective-bargaining agreement with Local 547 relating to paying the Stationary Engineers Local 547, Education Fund, Central Pension Fund, and the International Union of Operating Engineers Local 547 and Participating Employers' Health & Welfare Trust Fund, the grievance procedure, and wage rates.

(c) Failing and refusing to bargain with Local 24, Hotel Employees and Restaurant Employees International Union, AFL–CIO, as the exclusive bargaining represen-

tative of the employees in the following appropriate unit (unit B) by unilaterally reducing the gratuity rate paid to unit B employees who work during Sunday brunch and implementing a medical plan for unit B employees and charging them for participation in the plan:

> All employees set forth in Appendix A through F of the April 1, 2000, to December 31, 2002 collective-bargaining agreement.

(d) Repudiating the provisions of its April 1, 2000, to December 31, 2002 collective-bargaining agreement with Local 24 relating to the grievance procedure.

(e) Failing and refusing to provide Locals 547 and 24 with information that is relevant and necessary to the performance of their duties as the exclusive bargaining representative of the employees in units A and B, respectively.

(f) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Rescind its decision in late July 2000 to subcontract unit A work, restore the subcontracted work to the unit A employees, and make them whole, with interest, for any loss of earnings and other benefits they may have suffered as a result of the Respondent's unlawful conduct, in the manner set forth in the remedy section of this decision.

(b) Within 14 days of this Order, offer unit A employees who were laid off because of the Respondent's unlawful subcontracting full reinstatement to their former jobs or, if such jobs no longer exist, to substantially equivalent positions, without prejudice to their seniority or other rights and privileges previously enjoyed, and make them whole for any loss of earnings or other benefits suffered as a result of their layoffs, in the manner set forth in the remedy section of this decision.

(c) Honor the terms and conditions of its January 1, 2001, to March 31, 2003 collective-bargaining agreement with Local 547 covering unit A, and its April 1, 2000, to December 31, 2002 collective-bargaining agreement with Local 24 covering unit B, until a new agreement or good-faith impasse in negotiations is reached.

(d) Make whole the unit A employees for any loss of earnings and other benefits they may have suffered as a result of the Respondent's repudiation of the provisions of the agreement relating to wage rates and paying the Stationary Engineers Local 547, Education Fund, Central Pension Fund, and the International Union of Operating Engineers Local 547 and Participating Employers' Health & Welfare Trust Fund, with interest, as prescribed in the remedy section of this decision.

(e) Make all contractually required fringe benefit fund payments or contributions, if any, that have not been made on behalf of unit A employees since March 17, 2002, and reimburse unit employees for any expenses ensuing from its failure to make the required payments, in the manner set forth in the remedy section of this decision.

(f) Process all grievances that have not been processed for unit A employees since August 14, 2002, and for unit B employees since August 23, 2002.

(g) Within 14 days from this Order, rescind the reduction in the gratuity rate paid to unit B employees who work during Sunday brunch that was implemented on October 8, 2002.

(h) On request of Local 24, rescind the medical plan implemented on November 29, 2002, and return to the status quo or any other plan agreed to by Local 24.

(i) Make the unit B employees whole for any loss of earnings or other benefits they may have suffered as a result of the reduction in the gratuity rate and implementation of the medical plan, in the manner set forth in the remedy section of this decision.

(j) Provide Locals 547 and 24 with the information they requested on August 14 and October 21, 2002, respectively.

(k) Preserve and, within 14 days of a request, or such additional time as the Regional Director may allow for good cause shown, provide at a reasonable place designated by the Board or its agents, all payroll records, social security payment records, timecards, personnel records and reports, and all other records including an electronic copy of such records if stored in electronic form, necessary to analyze the amount of backpay due under the terms of this Order.

(l) Within 14 days after service by the Region, post at its facility in Detroit, Michigan, copies of the attached notice marked "Appendix."[4] Copies of the notice, on forms provided by the Regional Director for Region 7, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. In the event

[4] If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

that, during the pendency of these proceedings, the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since July 2002.

(m) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

Dated, Washington, D.C. July 21, 2003

Robert J. Battista,	Chairman
Wilma B. Liebman,	Member
Peter C. Schaumber,	Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this notice.

FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join, or assist a union

Choose representatives to bargain with us on your behalf

Act together with other employees for your benefit and protection

Choose not to engage in any of these protected activities.

WE WILL NOT fail and refuse to bargain in good faith with Local 547, International Union of Operating Engineers, AFL–CIO, as the exclusive bargaining representative of the employees in the following appropriate unit (unit A) by unilaterally subcontracting work normally performed by the unit A employees and laying off unit A employees:

> All full time and regular part time preventative maintenance, utility, and helper employees employed by us at our Detroit facility; but excluding all supervisors and guards as defined by the Act.

WE WILL NOT repudiate the provisions of our January 1, 2001, to March 31, 2003 collective-bargaining agreement with Local 547 relating to paying the Stationary Engineers Local 547, Education Fund, Central Pension Fund, and the International Union of Operating Engineers Local 547 and Participating Employers' Health & Welfare Trust Fund, the grievance procedure, and wage rates.

WE WILL NOT fail and refuse to bargain with Local 24, Hotel Employees and Restaurant Employees International Union, AFL–CIO, as the exclusive bargaining representative of the employees in the following appropriate unit (unit B) by unilaterally reducing the gratuity rate paid to unit B employees who work during Sunday brunch and implementing a medical plan for unit B employees and charging them for participation in the plan:

> All employees set forth in Appendix A through F of the April 1, 2000, to December 31, 2002 collective-bargaining agreement.

WE WILL NOT repudiate the provisions of our April 1, 2000, to December 31, 2002 collective-bargaining agreement with Local 24 relating to the grievance procedure.

WE WILL NOT fail and refuse to provide Locals 547 and 24 with information that is relevant and necessary to the performance of their duties as the exclusive bargaining representative of the employees in units A and B, respectively.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce employees in the exercise of the rights guaranteed them by Section 7 of the Act.

WE WILL rescind our decision in late July 2000 to subcontract unit A work, and WE WILL restore the subcontracted work to the unit A employees and make them whole, with interest, for any loss of earnings and other benefits they may have suffered as a result of our unlawful conduct.

WE WILL, within 14 days of the Board's Order, offer unit A employees who were laid off because of our unlawful subcontracting full reinstatement to their former jobs or, if such jobs no longer exist, to substantially equivalent positions, without prejudice to their seniority or other rights and privileges previously enjoyed, and WE WILL make them whole for any loss of earnings or other benefits as a result of their layoffs, with interest.

WE WILL honor the terms and conditions of our January 1, 2001, to March 31, 2003 collective-bargaining agreement with Local 547 covering unit A, and our April 1, 2000, to December 31, 2002 collective-bargaining

agreement with Local 24 covering unit B, until a new agreement or good-faith impasse in negotiations is reached.

WE WILL make whole the unit A employees for any loss of earnings and other benefits they may have suffered as a result of our repudiation of the provisions of the agreement relating to wage rates and paying the Stationary Engineers Local 547, Education Fund, Central Pension Fund, and the International Union of Operating Engineers Local 547 and Participating Employers' Health & Welfare Trust Fund, with interest.

WE WILL make all contractually required fringe benefit fund payments or contributions, if any, that have not been made on behalf of unit A employees since March 17, 2002, and reimburse unit employees for any expenses ensuing from our failure to make the required payments, with interest.

WE WILL process all grievances that have not been processed for unit A employees since August 14, 2002, and for unit B employees since August 23, 2002.

WE WILL, within 14 days from the Board's Order, rescind the reduction in the gratuity rate paid to unit B employees who work during Sunday brunch that we implemented on October 8, 2002.

WE WILL, on request of Local 24, rescind the medical plan we implemented on November 29, 2002, and return to the status quo or any other plan agreed to by Local 24.

WE WILL make the unit B employees whole for any loss of earnings or other benefits they may have suffered as a result of the reduction in the gratuity rate and implementation of the medical plan, with interest.

WE WILL provide Locals 547 and 24 with the information they requested on August 14 and October 21, 2002, respectively.

PASTELLE COMPANY, INC., D/B/A ST. REGIS HOTEL